HON'BLE SRI JUSTICE B.PRAKASH RAO
and
HON'BLE SRI JUSTICE RAMESH RANGANATHAN

On Thursday, the Twenty Fourth day of August 2006.

W.P.No.9645 of 2006

Government of Andhra Pradesh, represented by Principal Secretary, Home Department, Secretariat, Hyderabad.
.. Petitioner

And

G. George, Ex-Sub Inspector of Police,
Ongole, Prakasham District.
… Respondent

HON'BLE SRI JUSTICE B.PRAKASH RAO
and
HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.9645 of 2006

ORDER: (Per the Hon'ble RR,J)

Challenging the Order of the Tribunal in O.A.No.7973 of 2003 dated 28.4.2004 the present writ petition is filed.

On taking note of the contention of the applicant that the impugned order in G.O.Rt.No.297, dated 29.9.2003 had been passed under the mistaken impression that the Tribunal had dismissed O.A.No.1549 of 1995, and that subsequently it was restored and final orders were passed on 17.2.2003, the Tribunal directed the petitioner herein to take necessary further action in the matter in terms of the earlier orders of the Tribunal in O.A.No.1549 of 1995. The impugned orders passed in G.O.Rt.No.297 dated 29.9.2003 was set aside and the O.A. was disposed of accordingly.

Earlier in O.A.No.1549 of 1995 the Tribunal, by order dated 17.2.2003, held that since the show cause notice was issued by the Government without consulting the A.P. Public Service Commission, it was liable to be set aside. The Tribunal, however,

held that it's orders did not preclude the Government from consulting the A.P. Public Service Commission and, after hearing the applicant, taking necessary action thereafter.

The impugned order in G.O.Rt.No.297 dated 29-9-2003 does not refer to the fact that the Government had consulted the A.P. Public Service Commission. Learned Government Pleader would submit that the Department had consulted the A.P. Public Service Commission and the Commission, vide letter dated 18.08.2003, had agreed to the proposal of the Government to impose the punishment of removal from service on the respondent-applicant.

It is well settled that an order of punishment must reflect application of mind and must indicate the reasons for imposition of such punishment. The impugned order in G.O.Rt.297 dated 29.9.2003 does not reflect application of mind on the part of the officer concerned. The impugned order does not also make any reference to the fact that the A.P. Public Service Commission had given it's approval in its letter dated 18.8.2003 and that the earlier order of the Tribunal in O.A.No.1549 of 1995 dated 17.2.2003 has been complied with. On the other hand the impugned order in G.O.Rt.No.297 dated 29.9.2003 refers to the fact that O.A.No.1549 of 1995 was dismissed for default on 26.7.2002, though the fact remains that the said O.A. was subsequently restored and was disposed of, on merits, by order dated 17.2.2003.

Since the impugned order of removal of service as passed in G.O.Rt.No.297 dated 29.9.2003 is vitiated for non-application of mind, the said order has been rightly set aside by the Tribunal. It is made clear that the order of the Tribunal shall not preclude the

petitioner herein from passing orders afresh in accordance with law, without being influenced by any observations made by the Tribunal in the order in O.A.No.7973 of 2003 dated 28.4.2004.

At this stage, Sri M. Vijay Kumar, learned counsel for the respondent, would submit that prior to the passing of the impugned order in G.O.Rt.No.297 dated 29.9.2003 the petitioner was paying subsistence allowance to the respondent-applicant and that, as a result of the impugned order, the petitioner herein stopped payment of subsistence allowance from November 2003 onwards. Since the impugned order of removal has been set aside by the Tribunal, the respondent-applicant must be deemed to continue under suspension till final orders are passed by the competent authority. He would, therefore, be entitled for payment of subsistence allowance till final orders are passed in accordance with law. The petitioner shall make payment of the subsistence allowance, including arrears thereof, to the respondent within a period of three months from the date of receipt of the copy of this order.

Subject to the above observations, the Writ Petition is disposed of. No costs.

JUSTICE B.PRAKASH RAO

JUSTICE RAMESH RANGANATHAN

24th August 2006.

BCS